



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**Via Facsimile and First Class Mail**  
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**MAR 29 2016**

RE: MUR 7027  
R. Carter Pate

Dear Mr. Levy:

On September 19, 2014, the Federal Election Commission ("Commission") received your joint *sua sponte* submission with Mr. Coggins and Ms. Vickers notifying the Federal Election Commission (the "Commission") of the possibility that your client, R. Carter Pate ("Pate"), may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") in connection with activity between August 24, 2011, and September 27, 2013.

After reviewing the Submissions, the Commission found reason to believe, on March 15, 2016, that Pate knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii) by making contributions, totaling \$43,100, in the name of another using his name to effect the contributions. The Commission also found reason to believe that Pate knowingly and willfully violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by consenting to corporate contributions. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination. Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as your client is notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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If your client is interested in engaging in pre-probable cause conciliation, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, your client may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless your client notifies the Commission in writing that he wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen  
Chair

Enclosures  
Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**MUR:** 7027

**RESPONDENT:** R. Carter Pate

**I. INTRODUCTION**

This matter was generated by a joint *sua sponte* submission by MV Transportation, Inc. (“MV”) and R. Carter Pate, MV’s former Chief Executive Officer (“CEO”). The submission notified the Commission that MV reimbursed Pate for six political contributions totaling \$43,100 that Pate made to federal candidates and political committees between 2011 and 2013. For the reasons described below, the Commission finds reason to believe that Pate knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii) by making contributions in the name of another and knowingly permitting his name to be used to effect such contributions. Further, the Commission finds reason to believe that Pate knowingly and willfully violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by consenting to making prohibited corporate contributions.

**II. FACTUAL BACKGROUND**

MV is a privately held corporation providing passenger transportation services throughout the United States.<sup>1</sup> At the time of the joint *sua sponte* submission, Jon Monson served as CEO and on the Board of Directors.<sup>2</sup> Monson also served as CEO from 1999 through 2011.<sup>3</sup>

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<sup>1</sup> Amended Submission at 1-2.

<sup>2</sup> See *id.* at 1.

<sup>3</sup> *Id.*

1 R. Carter Pate became CEO of MV in late 2011.<sup>4</sup> In that capacity, he also served on the  
2 Board of Directors.<sup>5</sup> Before that, Pate was the Global and U.S. Managing Partner for the Capital  
3 Projects, Infrastructure, and Government Practice at PricewaterhouseCoopers.<sup>6</sup> Pate retired as  
4 MV's CEO and Board member in September 2014.<sup>7</sup> As of September 2014, however, he  
5 continued to work with MV as a Strategic Advisor to the Board.<sup>8</sup> Throughout his career as an  
6 executive, Pate had significant experience with federal political campaigns and fundraising.

7 Brad Cornelsen was CFO of MV.<sup>9</sup> According to the joint *sua sponte* submission, MV  
8 terminated Cornelsen's employment in April 2014 for reasons unrelated to the reimbursements at  
9 issue in this matter.<sup>10</sup>

10 During MV's internal analysis of executive compensation in April 2014, Pate "reported  
11 certain unusual executive bonus payments" to the MV Board.<sup>11</sup> The Board then retained a law  
12 firm to conduct an internal investigation "regarding the executive bonus payments and other  
13 possible financial irregularities."<sup>12</sup> Through this investigation, the Board learned that between  
14 2011 and 2013, MV had reimbursed Pate for six federal political contributions totaling  
15 \$43,100.<sup>13</sup>

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<sup>4</sup> *Id.* at 2; Statement of R. Carter Pate ¶ 1 (Apr. 30, 2015) (attached to Pate Supp. Submission (May 4, 2015)) ("Pate Statement").

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Amended Submission at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *See id.* at 1. The submission does not state when MV hired Cornelsen. *See id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

1 Pate believed that as CEO, he had the authority to make all six federal contributions.<sup>14</sup>  
2 Further, MV asserts that until the internal investigation, the Board did not know that MV had  
3 reimbursed Pate with corporate funds for federal contributions.<sup>15</sup> As indicated by information in  
4 the Commission's possession, MV's bonus policy requires that any bonus for executive officers  
5 "be in writing in employment agreements," and approved by the Board's Compensation  
6 Committee. Nevertheless, other information in the Commission's possession also indicates that  
7 the Board did not approve Pate's bonuses as required under the policy because the  
8 reimbursements were not presented to them for approval — no Board members other than Pate  
9 and Cornelsen knew that corporate reimbursement for federal contributions had taken place.  
10 Based on the record before the Commission, it appears that Pate did not submit the  
11 reimbursements to the Board because he thought that contribution reimbursements did not  
12 require Board approval. The Commission possesses information, however, suggesting that Pate  
13 told Cornelsen that MV's General Counsel and the Board agreed that the contributions were to  
14 be reimbursed to Pate on a tax 'gross-up' basis. Although information in the record suggests that  
15 it was the CFO's responsibility to enforce MV's executive compensation policy, it appears that  
16 Cornelsen never confirmed that the Board had approved the requested reimbursements.

17 Pate states that he did not learn that corporate reimbursement for federal contributions  
18 was improper until an external law firm identified the contributions as an issue.<sup>16</sup>

19 **A. RickPerry.org Contribution**

20 On August 24, 2011, Pate made a \$5,000 contribution to RickPerry.org using a check  
21 from his personal account.<sup>17</sup> Based on the Commission's disclosure records, Pate held this

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<sup>14</sup> See Pate Statement ¶ 2.

<sup>15</sup> Amended Submission at 2.

<sup>16</sup> Pate Statement ¶ 2; *see also* Amended Submission at 2.

1 account jointly with his wife Angela, and half of the contribution was reattributed to her.<sup>18</sup> The  
2 record before the Commission indicates that Pate believed that as CEO, he had the authority to  
3 make the contributions, and did not seek or obtain approval from the Board or any other MV  
4 executive before making the RickPerry.org contribution. The Commission, however, also  
5 possesses information indicating that Monson, MV's then-Chairman of the Board, Kevin Klicka,  
6 MV's then-Chief Operating Officer ("COO"), and David Smith, MV's then-Vice President of  
7 Business Development, knew of the contribution. Specifically, it appears that Monson, with  
8 Klicka's assistance, sent Smith to represent MV at an October 4, 2011, RickPerry.org  
9 fundraising event using Pate's contribution as the ticket fee.

10 On November 15, 2011, Pate sent an email to his then-assistant, Jo Cobb, asking that she  
11 provide a copy of the check to Cornelsen for reimbursement.<sup>19</sup> Pate sent a copy of this email to  
12 Cornelsen.<sup>20</sup> Pate states that he does not recall specific correspondence from Cornelsen  
13 approving and authorizing the reimbursement.<sup>21</sup> Nevertheless, Pate asserts that MV reimbursed  
14 him for the contribution.<sup>22</sup>

#### 15 **B. Mica for Congress Contribution**

16 On December 5, 2011, Pate made a \$5,000 contribution to Mica for Congress using a  
17 check from his personal checking account.<sup>23</sup> As the information before the Commission

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<sup>17</sup> Pate Statement ¶¶ 5-6.

<sup>18</sup> See RickPerry.org Amended 2011 Oct. Quarterly Rpt. at 2,286 (Nov. 4, 2011) (reporting reattribution of \$2,500 of Robert Pate's \$5,000 contribution to Angela Pate on August 29, 2011).

<sup>19</sup> Pate Statement ¶ 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See *id.* ¶ 5.

<sup>23</sup> Pate Statement ¶ 7; Mica for Congress Amended 2011 Year-End Rpt. at 30-31 (May 5, 2012) (reporting receipt of two \$2,500 contributions on December 19, 2011).

1 indicates, Pate did not write the check, but instead signed it in advance and had his assistant  
2 "release" it. The record also indicates that Pate made this contribution in connection with his  
3 attendance at a Mica for Congress fundraising breakfast on December 8, 2011.<sup>24</sup>

4 The Commission possesses information indicating that on December 16, 2011, MV made  
5 a bonus payment to Pate via ACH electronic transfer in the gross amount of \$8,925, and that this  
6 amount represented a net payment of \$7,000 to Pate, \$5,000 of which constituted a  
7 reimbursement for Pate's contribution.<sup>25</sup>

#### 8 C. Pete Sessions for Congress Contributions

9 On April 24, 2012, Pate made a \$5,000 contribution to Pete Sessions for Congress using  
10 two \$2,500 checks from his personal checking account.<sup>26</sup> Additionally, on September 27, 2013,  
11 Pate asserts that he made a \$2,600 contribution to Pete Sessions for Congress.<sup>27</sup> The  
12 Commission's disclosure records, however, indicate that Pete Sessions for Congress attributed  
13 \$1,300 of this contribution to Pate and \$1,300 to his wife.<sup>28</sup> The Commission possesses  
14 information indicating that Pate wanted to give his support to Representative Sessions as a  
15 business decision, and Cornelsen would have known about the contributions.

16 On April 24, 2012, Pate's secretary sent an email to Cornelsen requesting reimbursement  
17 for the first two \$2,500 contributions.<sup>29</sup> As the information before the Commission indicates, on

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<sup>24</sup> The Commission possesses information indicating that Pate did not see the brochure for the breakfast, which stated that corporate contributions were prohibited.

<sup>25</sup> Pate states that he does not recall specific correspondence seeking reimbursement for this contribution, but "based on standard practice," believes that his secretary "provided the particulars of the contribution to the CEO, who approved and authorized reimbursement." Pate Statement ¶ 7.

<sup>26</sup> *Id.* ¶ 8; Pete Sessions for Congress 2012 Pre-Primary Rpt. at 9 (May 16, 2012) (reporting receipt of two \$2,500 contributions on May 5, 2012).

<sup>27</sup> Pate Statement ¶ 8.

<sup>28</sup> See Pete Sessions for Congress 2013 Oct. Quarterly Rpt. at 56-57 (Oct. 15, 2013).

<sup>29</sup> Pate Statement ¶ 8.

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1 April 27, 2012, MV made a bonus payment to Pate via ACH electronic transfer in the gross  
2 amount of \$6,078, which represented a net payment to Pate of \$5,000. On September 27, 2013,  
3 Pate requested reimbursement for the third \$2,600 contribution.<sup>30</sup> The Commission possesses  
4 information indicating that on the same day, MV made a bonus payment to Pate via “manual  
5 check,” which represented a net payment of \$2,600.

#### 6 **D. Cantor for Congress Contribution**

7 On June 20, 2012, Pate made a \$500 contribution to Cantor for Congress using a check  
8 from his personal checking account.<sup>31</sup>

9 On June 25, 2012, Pate’s secretary sent an email to Cornelsen asking for reimbursement  
10 of the contribution.<sup>32</sup> On the same day, Cornelsen sent an email to an individual who worked in  
11 Payroll approving Pate’s request.<sup>33</sup> As the information in the Commission’s possession  
12 indicates, on June 29, 2012, MV made a bonus payment to Pate via ACH electronic transfer in  
13 the gross amount of \$38,969, which included a \$507.35 “grossed up” reimbursement of the \$500  
14 contribution.

#### 15 **E. Romney Victory Contribution**

16 On September 10, 2012, Pate made a \$25,000 contribution to Romney Victory, Inc., a  
17 joint fundraising committee.<sup>34</sup> The Commission possesses information indicating that the  
18 contribution was made in connection with Pate’s attendance at a Romney campaign event.

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<sup>30</sup> *Id.* Pate states that he does not recall specific correspondence, but believes that Cornelsen approved reimbursement. *Id.*

<sup>31</sup> *Id.* ¶ 9; Cantor for Congress 2012 Oct. Quarterly Rpt. at 95 (Oct. 15, 2012) (reporting receipt of \$500 contribution on July 13, 2012).

<sup>32</sup> Pate Statement ¶ 9.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* ¶ 10; Romney Victory, Inc. Amended 2012 Oct. Quarterly Rpt. at 25,211 (June 15, 2013) (reporting receipt of \$25,000 contribution on September 24, 2012).



On August 31, 2012, Pate's secretary submitted a reimbursement request for the contribution, which Cornelsen approved on September 4, 2012.<sup>35</sup> As the information in the Commission's possession indicates, on September 5, 2012, MV made a bonus payment to Pate via ACH electronic transfer in the gross amount of \$36,977, which represented a net payment of \$25,000 to Pate.

### III. LEGAL ANALYSIS

#### A. There is Reason to Believe that Pate Knowingly and Willfully Violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii) by Making Contributions in the Name of Another and Using His Name to Effect the Contributions

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution.<sup>36</sup>

Based on Pate's actions, the Commission finds reason to believe that Pate made contributions in the name of another in violation of section 30122. Additionally, because Pate knowingly permitted his name to be used to effect the corporate contributions, the Commission finds reason to believe that Pate violated section 30122.

Here, the facts also indicate that Pate acted knowingly and willfully, despite Pate's assertion that he "did not know that corporate reimbursement for federal political contributions was improper."<sup>37</sup> A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>38</sup> This does not require proving knowledge of the specific statute or regulations that the respondent

<sup>35</sup> Pate Statement ¶ 10.

<sup>36</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(ii).

<sup>37</sup> See Pate Statement ¶ 2.

<sup>38</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

1 allegedly violated.<sup>39</sup> Instead, it is sufficient that the respondent “acted voluntarily and was aware  
2 that his conduct was unlawful.”<sup>40</sup> This may be shown by circumstantial evidence from which the  
3 respondents’ unlawful intent reasonably may be inferred.<sup>41</sup>

4 One example of such circumstantial evidence is “the [person’s] elaborate scheme for  
5 disguising their political contributions.”<sup>42</sup> Here, although the submission claims that the  
6 reimbursements “were always transparent within the records of the company, and neither MV  
7 nor Pate took any efforts to hide or disguise the federal contributions,”<sup>43</sup> the Commission  
8 possesses information indicating otherwise. The reimbursements appear to have been coded as  
9 bonuses rather than reimbursed business expenses, and the reimbursed amounts often were  
10 included within larger payments to Pate. In addition, it appears that Pate failed to inform the  
11 Board of the reimbursements despite the Board’s clear policy that the Compensation Committee  
12 approve any executive bonuses. Further, the Commission possesses information suggesting that  
13 Pate may have falsely advised Cornelsen that MV’s General Counsel and Board agreed that the  
14 contributions were to be reimbursed on a tax gross up basis. Thus, Pate’s requests for  
15 reimbursements may have been known to certain employees within MV (all of whom appear to  
16 have been his subordinates), but Pate’s actions were not “transparent.”

<sup>39</sup> *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>40</sup> *Id.*

<sup>41</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>42</sup> *Id.* at 214-15; see also Factual & Legal Analysis at 16, MUR 6922 (ACPAC, *et al.*). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Hopkins*, 916 F.2d at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

<sup>43</sup> Amended Submission at 3; see also Pate Statement ¶ 4.

1           There are other aggravating factors present here that the Commission has relied on when  
2 making a knowing and willful finding against a *sua sponte* respondent. They include: the  
3 involvement of a company's most senior officers in the reimbursement scheme; likely  
4 knowledge of the Act's prohibitions and limitations; and ongoing patterns of conduct repeated  
5 over an extended period of time.<sup>44</sup> Here, although Pate has been cooperative throughout the *sua*  
6 *sponte* process, Pate was a senior officer and engaged in the conduct at issue for more than two  
7 years, in apparent contradiction to MV's own policies and procedures. The Commission does  
8 not possess any information indicating that that Pate, Cornelsen, or any other high-level MV  
9 officer performed any due diligence or legal review concerning these reimbursements despite  
10 procedures in place to do so. The record also shows that Pate had significant experience with  
11 federal political fundraising and made federal contributions, which strongly suggests that he was  
12 aware of the Act's basic prohibitions and limitations. According to Commission records, Pate  
13 has contributed over \$100,000 to federal candidates and political committees since 1999.<sup>45</sup> In  
14 addition, the Commission possesses information indicating that Pate was familiar with and  
15 concerned about violating local and state campaign finance and ethics rules, including "pay-to-  
16 play" laws. With this level of experience and knowledge, Pate also would likely have been  
17 familiar with the federal prohibitions against contributions in the name of another and  
18 contributions by corporations and federal contractors.

<sup>44</sup> See Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,697 (Apr. 7, 2007) ("*Sua Sponte* Policy"); see, e.g., Factual & Legal Analysis at 7, MUR 6515 (Professional Fire Fighters of Wisconsin, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where officers submitted false expense forms to receive reimbursements for political contributions); Factual & Legal Analysis at 6, MUR 6143 (Galen Capital Group, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where CEO and other conduits signed donor cards containing warnings against reimbursed contributions and where CEO attempted to conceal true purpose of reimbursement checks).

<sup>45</sup> See <http://www.fec.gov/finance/disclosure/norindsea.shtml> (search results for "Carter Pate") (last accessed Oct. 29, 2015).

**B. There is Reason to Believe that Pate Knowingly and Willfully Violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by Consenting to Corporate Contributions**

The Act prohibits corporations from making contributions to a federal political committee other than independent expenditure-only political committees, and further prohibits any officer of a corporation from consenting to any such contribution by the corporation.<sup>46</sup> Here, because Pate consented to making prohibited corporate contributions to candidate committees, the Commission finds reason to believe that he violated section 30118(a).

Additionally, for many of the same reasons discussed above, the Commission finds reason to believe that Pate knowingly and willfully violated section 30118(a). Specifically, the record strongly suggests that Pate attempted to conceal the conduct and had knowledge of the basic prohibitions and limitations of the Act, including the prohibition against corporate contributions.

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<sup>46</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (e).